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No. 705

Supreme Court of the United States

(October Term, 1945)

The Federal National Bank, of Shawnee, Oklahoma, a corporation, Guardian of the Estate of Minnie O. Cammack, an incompetent person,
Petitioner,

VERSUS

New York Life Insurance Company, a corporation,
Respondent.

BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

(OCTOBER TERM, 1945)

No. 705

THE FEDERAL NATIONAL BANK, OF SHAWNEE, OKLAHOMA, a corporation, Guardian of the Estate of MINNIE O. CAMMACK, an incompetent person,
Petitioner,

VERSUS

NEW YORK LIFE INSURANCE COMPANY, a corporation,
Respondent.

BRIEF OF RESPONDENT

STATEMENT

The question for decision presented to the United States Circuit Court of Appeals for the Tenth Circuit in this case, was whether respondent, who had paid out the full proceeds of a policy of insurance issued by it to the assignee of the insured and beneficiary named in the policy, could be compelled to pay the same a second time to the beneficiary in said policy, where it appeared that insured was without understanding at the time such assignment was made. That Court denied recovery.

The policy was issued June 10, 1928 (R. 163), when there was no question of insured's competency. On July 11,

1940, the insured and beneficiary executed a written assignment of the policy to Benjamin Franklin Fields (R. 213, 214), which was received in evidence (R. 134). This assignment, together with an application for a policy loan of $7,769.00 (R. 220), was transmitted to respondent's Home Office in New York City by letter (R. 219) from its office in Oklahoma City, and received at respondent's Home Office July 17, 1940 (R. 146). After examination of the papers respondent, from its Home Office, on July 22, 1940, issued its check (R. 187), payable to the assignee in the sum of $7,769.00, and forwarded same to the assignee at Tulsa, Oklahoma (R. 146).

After insured's death in January, 1941, assignee made proofs of death (R. 205, 209, 211-212), which were received in evidence (R. 148). After the proofs of death were examined the Company, on February 13, 1941, issued its check (R. 185), payable to the assignee in the sum of $1,198.17, in payment of the balance of the proceeds of the policy, and forwarded it to its Oklahoma City office, where it was delivered to the assignee (R. 148, 149).

At the time of the handling of the assignment, the loan, and the death benefits under the policy, no one at respondent's Home Office was acquainted either with the assignee, the insured or the beneficiary, and had no knowledge of any dealings between them, or of the mental condition, competency or capability of insured or the beneficiary (R. 145). The same was true of all of respondent's employees in Oklahoma who had anything to do with any of the transactions.

On May 24, 1941, the County Court of Pottawatomie County, Oklahoma, without notice, appointed a guardian for the beneficiary "for the reason that she is incompetent to manage her property and does not know and understand the consequences of her acts and is being imposed upon as alleged in said petition, and is in danger of being defrauded" (R. 194). After notice and hearing and on June 6, 1941, such court appointed a guardian for the property and estate of the beneficiary on the ground that "she is mentally incompetent to manage her property" (R. 195).

Thereafter, such guardian instituted suit to recover the proceeds of the policy for the beneficiary.

The trial court found that the insured was wholly without understanding and that the beneficiary was "incompetent to the extent she was unable to manage and care for her property properly unassisted, and, by reason thereof, likely would be deceived and imposed upon by artful and designing persons, and while she was not wholly without understanding, her mental capabilities to judge her transactions properly were impaired" (R. 28).

SUMMARY OF ARGUMENT

I.

The Circuit Court of Appeals has not decided an important question of local law in a way probably in conflict with applicable local decisions. There are no local decisions on the question presented.

II.

In the absence of a decision of any State Court on the point, the Supreme Court will leave undisturbed an interpretation adopted by the Circuit Court of Appeals, whose Circuit includes such State; and rulings of a local federal court applying local law will not be set aside by this Court except on a plain showing of error.

III.

The Circuit Court of Appeals has not so far departed from the accepted and usual course of judicial proceedings as to call for exercise of this Court's power of supervision.

IV.

Where an insurance company has, in good faith, paid over to the person apparently entitled thereto the full amount of the policy without knowledge that insured lacked capacity and without notice of any claim of another, it is grossly inequitable to require it to pay the amount of the policy a second time.

V.

Petitioner and its ward were and are estopped to assert the invalidity of the assignment of the policy or to recover the proceeds from respondent. Petitioner's ward, herself, executed the assignment with intention the policy would be cashed in (R. 140) to enable the assignee to surrender the policy (R. 141), and took the assignment and pen to the insured out on the sun porch and had him sign

it (R. 143). She did not read the assignment to insured because he could not have understood it, but he would do anything she asked him to do (R. 144). This point was urged upon but not reached by the Circuit Court of Appeals, and may be urged here to sustain the judgment of that Court.

ARGUMENT

I.

The Circuit Court of Appeals has not decided an important question of local law in a way probably in conflict with applicable local decisions. As that Court said:

> "No case has been cited, and our search has failed to reveal one, which has compelled an insurance company to pay a policy a second time when in good faith it has paid the amount of the policy to a new beneficiary or to an assignee, on the ground that the assignment or the change in beneficiary was void because of lack of mental capacity of the insured at the time the change was made, and that is so even though the original beneficiary did not join in the application for change of beneficiary or in the application for the assignment of the policy" (R. 232).

It is apparent that the Circuit Court knew there was no applicable Oklahoma decision on the point involved. It is indicated that the Circuit Court had the Oklahoma decisions in mind for in the opinion it said, "Oklahoma, apparently, has never passed upon the right of a beneficiary

to assign an expectancy under an insurance policy" (R. 231).

Petitioner cited no Oklahoma decision on the point in the court below, and cites no such decision here.

In *Connecticut General Life Ins. Co.* v. *Cochran et al.*, 95 Okla. 111, 218 Pac. 313, cited by petitioner, the Oklahoma Court merely held that where a grantor in a deed is incapable of understanding that the effect of such deed would be to divest him of title to the land, he is wholly without understanding and that such deed is void.

In *Dozier* v. *Schuermann*, 175 Okla. 298, 52 Pac. (2d) 1063, cited by petitioner, it is held that where a person wholly without understanding executes a promissory note, there is no liability on such note.

In *Norris* v. *Dagley*, 64 Okla. 171, 166 Pac. 718, cited by petitioner, it was held that notes and a mortgage executed by a person wholly without understanding were unenforcible.

In *Devin et al.* v. *Connecticut Mutual Life Ins. Co.*, 59 Okla. 192, 158 Pac. 435, it was held that an assignment, in writing, of an insurance policy transfers the title to the policy and that insured cannot thereafter change the assignment by inserting therein a new name.

In *City National Bank of Lawton* v. *Lewis et al.*, 73 Okla. 329, 176 Pac. 237, cited by petitioner, it was held that an alleged oral assignment of an insurance policy to a bank did not defeat the right of the beneficiary named therein to recover the proceeds of the policy.

In *McMurtray* v. *McMurtray et al.*, 67 Okla. 50, 168 Pac. 422, cited by petitioner, it was held that in a contest between the original beneficiary and a substituted beneficiary named by the insured when he was wholly without understanding, the original beneficiary can recover the proceeds of the policy from the insurance company which still has the money and has not yet paid it to any one.

In none of these cases was the right to recover the proceeds of a policy from an insurance company a second time involved. No Oklahoma court has ever passed on such question, and there was no local law from which the Circuit Court of Appeals could determine the question. As pointed out by the Circuit Court of Appeals, the application for the assignment of the policy did not result in the making of a new contract, but constituted performance on the part of the Company of its contract with insured made at a time when he was admittedly sane (R. 234).

II.

In the absence of a decision of any state court on the point involved, the Supreme Court will leave undisturbed an interpretation placed thereon by the Circuit Court of Appeals, whose Circuit includes such State.

—*McGregor* v. *State Mutual Life Assur. Co.*, 315 U. S. 280, 86 L. Ed. 847.

Rulings of a local Federal Court applying local law will not be set aside by the Supreme Court except on a plain showing of error.

—*Palmer* v. *Hoffman*, 318 U. S. 109, 87 L. Ed. 645.

Where the conclusion reached by the Circuit Court of Appeals does not spring from a statute, nor even from a clear or satisfying line of decisions, the reasoned judgment of such Court will not be reversed by the Supreme Court unless there is a definite conviction of error in the conclusion.

—*Helvering* v. *Stuart*, 317 U. S. 154, 163, 87 L. Ed. 154, 160.

III.

The Circuit Court of Appeals has not so far departed from the accepted and usual course of judicial proceedings as to call for exercise of this Court's power of supervision. Petitioner complains that the court below, in its second ground of decision, held that the policy provision, reading, "The Company assumes no responsibility for the validity of any assignment," prevented a recovery on the policy. Petitioner asserts that such question was not presented by the parties in their pleadings, briefs or arguments. In respondent's amended answer filed in the trial court, respondent specifically pleaded the policy provision above quoted (R. 10). The testimony in the trial court specifically covered the quoted provision of the policy (R. 128). Petitioner, who was plaintiff in the trial court, introduced the original policy in evidence (R. 57), and the policy containing such provision was a part of the record in the Circuit Court of Appeals (R. 162-177). Hence, the contention that this policy provision was not presented to the lower courts is without merit. The Circuit Court of Appeals,

by following the policy provision which was before it, did not depart from the accepted and usual course of judicial proceedings.

Petitioner asserts that the policy provision, above quoted, does not have the effect accorded it by the Circuit Court of Appeals. No authority is cited to this effect. As it was said of this provision by the Circuit Court of Appeals, "There is no ambiguity or uncertainty as to the meaning of this provision. It can only mean that the Company shall not become liable by virtue of the assignment which, for any reason, was invalid" (R. 235).

IV.

Payment, in good faith, of the full amount of a life insurance policy to the last regularly designated beneficiary, without knowledge that insured lacked capacity to make the designation under which payment was made, discharges the insurer's obligation under the policy.

—***State Life Insurance Co.*** v. ***Coffrini*** (C. C. A. 3) **285 Fed. 560;**

New England Mutual Life Ins. Co. v. ***Reynolds,*** **(Ala.) 116 So. 151.**

Where an insurance company has, in good faith, paid over to the person apparently entitled thereto the full amount of a policy, without notice of any claim of another, it is grossly inequitable to require it to pay the amount of the policy a second time.

—*Metropolitan Life Ins. Co.* v. *Bramlett,* (Ala.) 140 So. 752;

Renick v. *Mutual Life Ins. Co.* (Ky.) 106 S. W. 310;

Voss v. *Connecticut Mutual Life Ins. Co.* (Mich.) 92 N. W. 102;

Griffin's Adm'r v. *Equitable Assurance Society* (Ky.) 84 S. W. 1164;

Metropolitan Life Ins. Co. v. *Louisville Trust Co.* (Ky.) 87 S. W. 269;

Nutter v. *Des Moines Life Ins. Co.* (Iowa) 136 N. W. 891.

V.

Under the facts and circumstances of this case, petitioner and its ward were and are estopped to assert the invalidity of the assignment in question or to recover from respondent. In its amended answer in the trial court, respondent pleaded estoppel (R. 11). In its amendment to the answer, estoppel was also pleaded (R. 14, 15). In its Statement of Points to be relied upon in the Circuit Court of Appeals, estoppel was raised (R. 53, Points 8 and 9, R. 54, Point 11). The Circuit Court of Appeals, in its opinion, mentioned the question of estoppel, but did not pass upon it (R. 231).

Points urged upon but not reached by the Circuit Court of Appeals may be urged in the Supreme Court to sustain the judgment of the Circuit Court of Appeals.

—*United States of America* v. *Ballard,* 322 U. S. 78, 88 L. Ed. 1148;

Langnes v. *Green*, 282 U. S. 531, 75 L. Ed. 520;

Story Parchment Co. v. *Paterson Parchment Paper Co.*, 282 U. S. 555, 75 L. Ed. 544.

Minnie O. Cammack, the beneficiary, joined in the execution of the assignment of the policy (R. 140). Although her interest was an expectancy, the assignment of an expectancy or future interest, under Oklahoma law, is enforceable in equity.

—*Kaylor* v. *Kaylor*, 172 Okla. 535, 45 Pac. (2d) 743;

McMahon v. *Foley* (Okla.) 188 Okla. 552, 111 Pac. (2d) 1076.

This is the general rule.

—*Andrews* v. *Bankers Life Company* (Iowa) 240 N. W. 215;

Finegan v. *The Prudential Life Insurance Co.* (Mass) 14 N. E. (2d) 172;

Kendall v. *Equitable Life Assurance* (Mass.) 51 N. E. 464;

Connecticut Mutual Life Ins. Co. v. *Allen* (Mass.) 126 N. E. 367;

Central State Bank v. *Edwards* (Tenn.) 111 S. W. (2d) 873.

Minnie O. Cammack, the beneficiary, testified that the signature on the assignment of the policy was in her own handwriting, and that insured's signature thereon was in his own handwriting (R. 140); that she was present when insured signed the instrument; that he was out on the sun

porch and she took the paper and pen out and had him sign it; that it was her intention when she signed it and turned it over to the assignee that such assignee should cash the policy out, get the money on it and bring it back to her (R. 143, 144); that she did not read the assignment to insured, since that wouldn't have made any difference; that he wouldn't have paid any attention to it; that he could not have understood it, but he would do anything she asked him to do if she told him to do it (R. 144); that she gave instructions to the assignee to have the check made out to her and return it to her (R. 145), but she never did write respondent about it at all or give it any information about it; that the assignee was the only one she told to have the check made out to her (R. 140); that she gave the assignment to the assignee to enable him to get the cash on the policy (R. 140, 141); that she thought sure the assignee would do what he said he would and that she just made a mistake (R. 142).

This testimony shows that the beneficiary actually procured the assignment to be made, with full knowledge of the mental condition of her husband; that she concealed his mental condition from respondent; that respondent was without knowledge, or the means of knowledge, of the real facts; that the assignment was presented to respondent with intention that it should be acted upon; that respondent relied thereon and acted to its prejudice by paying the proceeds of the policy to the assignee.

These are all the elements which, under the local law, are required to constitute estoppel.

—*Rosser* v. *Texas Company*, 173 Okla. 309, 48 Pac. (2d) 327.

It likewise appears that it was through the acts of the beneficiary that the assignee was enabled to procure respondent to pay the proceeds of the policy to him. She put in motion the proceedings to secure such proceeds. She enabled the assignee to occasion the loss which she has sustained, and since respondent is innocent the loss must fall upon the one who occasioned it.

Where one of two innocent persons must suffer by the acts of a third, the one who enables the third person to occasion the loss must suffer it, and what one induces another to regard as true is the truth between them if the other has been misled thereby.

—*Magnolia Petroleum Company* v. *Saylor*, 72 Okla. 282, 180 Pac. 861;

Nelson v. *Jones*, 93 Okla. 85, 219 Pac. 667;

Morris v. *Packard Dallas Co. et al.*, 184 Okla. 277, 86 Pac. (2d) 779;

Joy v. *Farmers National Bank of Chickasha*, 158 Okla. 1, 11 Pac. (2d) 1074;

United States v. *First National Bank of Prague, Oklahoma* (C. C. A. 10) 124 Fed. (2d) 484.

Respondent had no duty to make inquiry as to insured's mental condition.

—*Bosworth* v. *Wolfe* (Wash.) 264 Pac. 413.

The execution of the assignment of the policy by insured resulted from the active instigation, procurement and

solicitation of the beneficiary. She knew his mental condition. Respondent did not know it. According to her testimony insured's acts were her acts because he would do anything she told him to do. If recovery is permitted herein she will be the sole beneficiary of such recovery, since insured left no legal heirs. By actively procuring the assignment to be executed and delivered to respondent, thereby inducing respondent to pay the proceeds of the policy to the assignee designated by insured and beneficiary, the beneficiary estopped herself from asserting the invalidity of such assignment or from recovering the proceeds again from respondent.

—*Franklin Life Ins. Co.* v. *Morrell* (Ark) 106 S. W. 680;

Rusk v. *Fenton* (Ky.) 29 Am. Rep. 413;

Gray v. *Allen* (Tex) 243 S. W. 284;

Coburn v. *Raymond* (Conn.) 57 Atl. 116;

Andrews v. *Bankers Life Co.* (Iowa) 240 N. W. 215.

Although the trial court found Minnie O. Cammack was not capable of managing her property, unassisted, he found she was not entirely without understanding. A person of such capacity is capable of making contracts under local law.

Under Oklahoma decisions, a person may be of unsound mind, aged, an imbecile of the highest order, of weak mind, bordering on idiocy, erratic, irritable, changeable in his views, be incapable of judging values or of making

discreet trades or may not have ability to transact business but he still may make contracts and convey property.

—*Oklahoma Natural Gas Corp.* v. *Lay,* 175 Okla. 75, 51 Pac. (2d) 580;

Monarch Loan Company v. *Shellenberger,* 159 Okla. 247, 15 Pac. (2d) 53;

Maas v. *Dunmyer,* 21 Okla. 434, 96 Pac. 591;

Paulter v. *Manuel,* 25 Okla. 59, 108 Pac. 749;

Scott v. *Scott,* 131 Okla. 144, 268 Pac. 245;

Sanders v. *Rhea,* 119 Okla. 208, 249 Pac. 350.

Under local law, for a person of unsound mind to rescind a contract, restoration of all benefits is necessary whether the lunatic received any actual benefit or not.

—*Edwards* v. *Miller,* 102 Okla. 189, 228 Pac. 1105.

Under the ruling of the trial court and under local law, Minnie O. Cammack was competent to contract, and could not rescind a contract without restoration of all benefits. If, under local law, she had the capacity to contract, she was *sui juris* and could be estopped.

CONCLUSION

It is respectfully submitted that the application for writ of certiorari should be denied.

There are no special or important reasons requiring a review on writ of certiorari. The grounds presented by

petitioner are not of the character calling for the exercise of the Court's discretion.

If a review be allowed, it is respectfully urged that the decision of the Circuit Court of Appeals be affirmed.

Respectfully submitted,

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